

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RANDELL SHARP)	
Claimant)	
)	
VS.)	
)	Docket No. 1,003,104
PSC)	
Respondent)	
AND)	
)	
SPECIALTY RISK SERVICES)	
Insurance Carrier)	
)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Claimant appealed the August 8, 2003, preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish.

ISSUES

Claimant sustained a compensable injury on March 16, 2002 while working for respondent in Coffeyville, Kansas. In the August 8, 2003 preliminary hearing Order, Judge Frobish determined claimant's present back complaints and his request for additional treatment for those complaints did not stem from the March 16, 2002 accident but, instead, arose following an subsequent event at claimant's home occurring in January, 2003.

Claimant contends Judge Frobish erred. Although claimant admits that in January 2003 he bent over to pick up a piece of wood in his yard and immediately felt the onset of pain in his low back, left buttock and left leg, he maintains this event was a natural and probable consequence of the original injury.

Conversely, respondent and its insurance carrier contend the Board should either dismiss the appeal for lack of jurisdiction or affirm the August 8, 2003 Order. They argue that claimant has failed to raise an issue that is appealable from a preliminary hearing order. Further, they argue the January 2003 accident was either an aggravation of his previous work-related injury or an aggravation of his underlying congenital abnormality.

In either instance, they argue, there is no liability for claimant's present need for treatment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes as follows:

The Board has jurisdiction to review a preliminary hearing finding of whether a worker's then present need for medical treatment was caused by an accident that occurred at work or whether it was caused by an intervening or subsequent accident. The Board has held that the issue is analogous to whether claimant has sustained an accidental injury arising out of and in the course of employment, which is a jurisdictional issue specifically cited in the Workers Compensation Act as being subject to Board review from a preliminary hearing order. See K.S.A. 44-534a. This is the very issue presented herein. Accordingly, the Board has the authority to hear this appeal.

Claimant sustained a compensable injury on March 16, 2002 while working for respondent at a refinery in Coffeyville, Kansas. Claimant was working near some pipes that other individuals were testing for proper pressure when a plug unexpectedly blew off, striking claimant in the left side and causing him to fall off a scaffold where he had been tied off. Following the accident he had surgery to his left hand and elbow. According to claimant he also injured his neck and back. After his initial treatment, claimant returned to his home in Louisiana and began treatment with Dr. Vandeventer. Dr. Vandeventer last saw claimant in December of 2002 and released him at that time. Claimant testified that he had restrictions at the time of his release but those records were not produced at the hearing.

In January of 2003 claimant was outside in his yard and bent over to pick up a board. He described the board as a 1 x 4 that was about a foot long. As he bent down and was approximately 6 inches from the board, he felt a sharp pain going down his low back and into his left buttock and down his leg. After this event, claimant says his symptoms significantly increased.

Claimant was evaluated by Dr. Paul Stein, an neurosurgeon, who suggested that claimant needed diagnostic tests and additional treatment for his low back complaints but he related this need for treatment to the event of January 2003 and not to the original March 16, 2002 work injury. He made this determination after reviewing the claimant's past medical records and noting that claimant's original complaints following the work-related injury did not include any radicular complaints and that Dr. Vandeventer had released claimant at maximum medical improvement before the January 2003 accident.

Claimant argues that the January 2003 event was, in essence, a natural consequence of the March 16, 2002 injury. In support of this argument, claimant's counsel cites, among others, the case of *Stockman v. Goodyear Tire & Rubber Company*, 211 Kan

160,505 P.2d 697 (1973) and *Wietham v. Safeway Stores, Inc.* 16 Kan. App.2d 188, 820 P.2d 719 (1991). IN both these cases the claimants suffered a compensable injury and then, sometime after the work-related injury, they were involved in another event that caused further injury. In *Stockman* the claimant reinjured his back at home while picking up a tire. In *Wietham*, the claimant reinjured his back while lifting a case of product. In both cases, the second accident was found to be a separate, new and distinct accident and therefore not a compensable consequence of the original injury.

These cases clearly illustrate the very concept relied upon by the ALJ in this case. When claimant was at home in January of 2003 and reached down for the board, he sustained a new, separate and distinct injury for which compensation is not available. Judge Frobish found that, based upon the opinions of Dr. Stein and claimant's own testimony, the claimant's current complaints are not a natural and probable result of his original injury. The Board finds this conclusion is well reasoned and supported by the record.

The August 8, 2003 preliminary hearing Order should be affirmed. The Board concludes that claimant has failed to prove his present need for medical treatment is the result of the March 16, 2002 accident at work.

AWARD

WHEREFORE, it is the finding, decision, and order of the Board that Administrative Law Judge Jon L. Frobish's preliminary hearing Order dated August 8, 2003 should be and is hereby affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 2003.

BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
 P. Kelly Donley, Attorney for Respondent
 Frank A. Caro, Attorney for Fund
 Jon L. Frobish, Administrative Law Judge
 Paula S. Greathouse, Workers Compensation Director